

AMENDED IN SENATE MAY 20, 2014

AMENDED IN SENATE MAY 12, 2014

AMENDED IN SENATE APRIL 3, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 215

Introduced by Assembly Member Buchanan
(Principal coauthor: Assembly Member Olsen)
(Principal coauthors: Senators Liu, Correa, and Padilla)
(Coauthors: Senators Block and Monning)

January 31, 2013

An act to amend Sections 44932, 44934, 44935, 44936, 44937, 44939, 44940, 44941, 44943, 44944, and 44945 of, to add Sections 44934.1, 44939.1, 44939.5, 44941.1, 44944.05, and 44944.3 to, and to repeal and add Section 44944.1 of, the Education Code, relating to school employees.

LEGISLATIVE COUNSEL'S DIGEST

AB 215, as amended, Buchanan. School employees: dismissal or suspension: hearings.

Existing law prohibits a permanent school employee from being dismissed, except for one or more of certain enumerated causes, including immoral or unprofessional conduct.

This bill would also include egregious misconduct, as defined, as a basis for dismissal.

Existing law requires the governing board of a school district to give notice to a permanent employee of its intention to dismiss or suspend the employee, together with a written statement of charges, at the

expiration of 30 days from the date of service of the notice, unless the employee demands a hearing.

This bill would additionally apply the above to egregious misconduct. The bill would authorize ~~a~~ *the* governing board of a school district, if the *governing* board has given the above notice, based on written charges, to amend charges less than 90 days before the hearing on the charges only upon a showing of good cause. The bill would require that the employee be given a meaningful opportunity to respond to the amended charges. The bill would authorize proceedings, based solely on charges of egregious misconduct, to be initiated via an alternative process, which this bill would establish, as provided.

Existing law prohibits the governing board of a school district from giving notice of dismissal or suspension of a permanent employee between May 15 and September 15 of any year.

This bill would authorize any notice of dismissal or suspension to be given at any time of year, as provided. The bill would require a notice of dismissal or suspension given outside of the instructional year of the schoolsite where the employee is physically employed to be in writing and served personally upon the employee. The bill would also revise various procedures for providing a notice of dismissal or suspension, and would impose various requirements for the filing of a demand for a hearing and the conduct of hearings by the Office of Administrative Hearings.

Existing law authorizes the governing board of a school district to immediately suspend an employee and give him or her notice of dismissal upon filing of written charges relating to immoral conduct, conviction of a felony, or any crime involving moral turpitude, with incompetency due to mental disability, with willful refusal to perform regular assignments without reasonable cause, as provided.

This bill would authorize an employee who has been placed on suspension pursuant to the above provisions to serve and file with the Office of Administrative Hearings a motion for immediate reversal of suspension, as provided.

Existing law provides that upon being charged, as specified, with certain sex or controlled substance offenses, a certificated employee be placed on either a compulsory leave of absence or an optional leave of absence for certain enumerated violations.

This bill would revise the definitions of “charged with a mandatory leave of absence offense” and “charged with an optional leave of absence offense” for purposes of those provisions governing when a

certificated employee is required to be placed on either a compulsory leave of absence or an optional leave of absence. Because these revisions would increase the number of employees subject to immediate placement on compulsory leave of absence, thereby increasing the duties of school districts, the bill would impose a state-mandated local program.

Existing law requires in a dismissal or suspension proceeding against a permanent employee, if a hearing is requested by the employee, that the hearing be commenced within 60 days from the date of the employee's demand for a hearing.

This bill would require that the hearing be commenced within 6 months from the date of the employee's demand for a hearing, and be completed by a closing of the record within 7 months of the date of the employee's demand for a hearing. The bill would revise various procedures for the conduct of those hearings, as prescribed, including the authority to waive the conductibility of the hearing by a Commission on Professional Competence and instead have the hearing conducted by a single administrative law judge. The bill would require, in a dismissal or suspension proceeding carried out under the above provisions, that the parties make specified disclosures in lieu of certain written discovery, as prescribed, and would authorize the parties to obtain discovery by oral deposition. The bill would require the governing board of the school district and the state to share equally the expenses of the hearing if the Commission on Professional Competence determines that the employee should be dismissed or suspended.

The bill would also make conforming changes to these provisions.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares both of the
2 following:

1 (a) Pupils, educators, school administrators, school boards, and
2 school district employees need a certificated employee dismissal
3 process that is both fair and efficient.

4 (b) This act is intended to revise existing statutes in a manner
5 that will update and streamline the procedures for certificated
6 employee discipline and dismissal, making it more cost effective
7 and reducing the time necessary to complete the dismissal process.

8 SEC. 2. Section 44932 of the Education Code is amended to
9 read:

10 44932. (a) A permanent employee shall not be dismissed
11 except for one or more of the following causes:

12 (1) Immoral conduct including, but not limited to, egregious
13 misconduct. For the purposes of this chapter, “egregious
14 misconduct” is defined exclusively as immoral conduct that is the
15 basis for an offense described in Section 44010 or 44011 of this
16 code, or in Sections 11165.2 to 11165.6, inclusive, of the Penal
17 Code.

18 (2) Unprofessional conduct.

19 (3) Commission, aiding, or advocating the commission of acts
20 of criminal syndicalism, as prohibited by Chapter 188 of the
21 Statutes of 1919, or in any amendment to that chapter.

22 (4) Dishonesty.

23 (5) Unsatisfactory performance.

24 (6) Evident unfitness for service.

25 (7) Physical or mental condition unfitting him or her to instruct
26 or associate with children.

27 (8) Persistent violation of or refusal to obey the school laws of
28 the state or reasonable regulations prescribed for the government
29 of the public schools by the state board or by the governing board
30 of the school district employing him or her.

31 (9) Conviction of a felony or of any crime involving moral
32 turpitude.

33 (10) Violation of Section 51530 or conduct specified in Section
34 1028 of the Government Code, added by Chapter 1418 of the
35 Statutes of 1947.

36 (11) Alcoholism or other drug abuse that makes the employee
37 unfit to instruct or associate with children.

38 (b) The governing board of a school district may suspend
39 without pay for a specific period of time on grounds of
40 unprofessional conduct a permanent certificated employee or, in

1 a school district with an average daily attendance of less than 250
2 pupils, a probationary employee, pursuant to the procedures
3 specified in Sections 44933, 44934, 44934.1, 44935, 44936, 44937,
4 44943, and 44944. This authorization shall not apply to a school
5 district that has adopted a collective bargaining agreement pursuant
6 to subdivision (b) of Section 3543.2 of the Government Code.

7 SEC. 3. Section 44934 of the Education Code is amended to
8 read:

9 44934. (a) This section shall apply to dismissal or suspension
10 proceedings based on charges as specified in Section 44932 or
11 44933, including proceedings based on charges of egregious
12 misconduct in combination with other charges. ~~Proceedings Section~~
13 ~~44934.1 shall apply to dismissal or suspension proceedings based~~
14 ~~solely on charges of egregious misconduct described in paragraph~~
15 ~~(1) of subdivision (a) of Section 44932 may be initiated pursuant~~
16 ~~to Section 44934.1. 44932.~~

17 (b) Upon the filing of written charges, duly signed and verified
18 by the person filing them, with the governing board of the school
19 district, or upon a written statement of charges formulated by the
20 governing board of the school district, charging that there exists
21 cause, as specified in Section 44932 or 44933, for the dismissal
22 or suspension of a permanent employee of the school district, the
23 governing board of the school district may, upon majority vote,
24 except as provided in this article if it deems the action necessary,
25 give notice to the permanent employee of its intention to dismiss
26 or suspend him or her at the expiration of 30 days from the date
27 of service of the notice, unless the employee demands a hearing
28 as provided in this article. Suspension proceedings may be initiated
29 pursuant to this section only if the governing board of the school
30 district has not adopted a collective bargaining agreement pursuant
31 to subdivision (b) of Section 3543.2 of the Government Code.

32 (c) Any written statement of charges shall specify instances of
33 behavior and the acts or omissions constituting the charge so that
34 the employee will be able to prepare his or her defense. It shall,
35 where applicable, state the statutes and rules that the employee is
36 alleged to have violated, and it shall also set forth the facts relevant
37 to each charge.

38 (d) If the governing board of the school district has given notice
39 to a certificated employee of its intention to dismiss or suspend
40 him or her, based upon written charges filed or formulated pursuant

1 to this section, the charges may be amended less than 90 days
2 before the hearing on the charges only upon a showing of good
3 cause. If a motion to amend charges is granted by the administrative
4 law judge, the employee shall be given a meaningful opportunity
5 to respond to the amended charges.

6 (e) A notice of the governing board of the school district to an
7 employee of its intention to dismiss or suspend him or her, together
8 with written charges filed or formulated pursuant to this section,
9 shall be sufficient to initiate a hearing under Section 11503 of the
10 Government Code, and the governing board of the school district
11 shall not be required to file or serve a separate accusation.

12 (f) This section shall also apply to the suspension of probationary
13 employees in a school district with an average daily attendance of
14 less than 250 pupils that has not adopted a collective bargaining
15 agreement pursuant to subdivision (b) of Section 3542.2 of the
16 Government Code.

17 SEC. 4. Section 44934.1 is added to the Education Code, to
18 read:

19 44934.1. (a) This section shall apply only to dismissal or
20 suspension proceedings based solely on charges of egregious
21 misconduct, as described in paragraph (1) of subdivision (a) of
22 Section 44932.

23 (b) Upon the filing of written charges, duly signed and verified
24 by the person filing them, with the governing board of a school
25 district, or upon a written statement of charges formulated by the
26 governing board of a school district charging that there exists
27 cause, as specified in paragraph (1) of subdivision (a) of Section
28 44932, for the dismissal or suspension of a permanent employee
29 of the school district, the governing board of the school district
30 may, upon majority vote, except as provided in this article if it
31 deems the action necessary, give notice to the permanent employee
32 of its intention to dismiss or suspend him or her at the expiration
33 of 30 days from the date of service of the notice, unless the
34 employee demands a hearing as provided in this article.

35 (c) Any written statement of charges of egregious misconduct
36 shall specify instances of behavior and the acts or omissions
37 constituting the charge so that the employee will be able to prepare
38 his or her defense. It shall, where applicable, state the statutes and
39 rules that the employee is alleged to have violated, and it shall also

1 set forth the facts relevant to each occasion of alleged egregious
2 misconduct.

3 (d) This section shall also apply to the suspension of
4 probationary employees in a school district with an average daily
5 attendance of less than 250 pupils that has not adopted a collective
6 bargaining agreement pursuant to subdivision (b) of Section 3542.2
7 of the Government Code.

8 SEC. 5. Section 44935 of the Education Code is amended to
9 read:

10 44935. (a) A report on the fitness of a certificated employee
11 in a dismissal or suspension proceeding initiated pursuant to
12 Section 44934 or 44934.1 shall not be received from a statewide
13 professional organization by a governing board unless the
14 certificated employee shall have been given, prior to the preparation
15 of the report in its final form, the opportunity to submit in writing
16 his or her comments on the report and unless a copy of the report
17 in final form is given to the certificated employee investigated at
18 least 10 days prior to its submission to the governing board.

19 (b) A report shall not be distributed other than to the governing
20 board and those persons participating in its preparation, unless the
21 certificated employee does not demand a hearing as provided by
22 Section 44937.

23 SEC. 6. Section 44936 of the Education Code is amended to
24 read:

25 44936. (a) The notice of dismissal or suspension in a
26 proceeding initiated pursuant to Section 44934 or 44934.1 may be
27 given at any time of year.

28 (b) Notwithstanding subdivision (a), the notice of dismissal or
29 suspension in a proceeding involving only charges of unsatisfactory
30 performance initiated pursuant to Section 44934 shall only be
31 given during the instructional year of the schoolsite where the
32 employee is physically employed. However, a notice of dismissal
33 or suspension in a proceeding involving charges of unsatisfactory
34 performance may be initiated pursuant to paragraph (2) of
35 subdivision (b) of Section 44938.

36 (c) The notice of dismissal or suspension given during the
37 instructional year of the schoolsite where the employee is
38 physically employed shall be in writing and be served upon the
39 employee personally or by United States registered mail addressed
40 to him or her at his or her last known address. A copy of the

1 charges filed, containing the information required by Section 11503
2 of the Government Code, together with a copy of the provisions
3 of this article, shall be attached to the notice.

4 (d) A notice of dismissal or suspension given outside of the
5 instructional year of the schoolsite where the employee is
6 physically employed shall be in writing and shall be served upon
7 the employee personally. A copy of the charges filed, containing
8 the information required pursuant to Section 11503 of the
9 Government Code, together with a copy of the provisions of this
10 article, shall be attached to the notice.

11 SEC. 7. Section 44937 of the Education Code is amended to
12 read:

13 44937. In a dismissal or suspension proceeding initiated
14 pursuant to Section 44934 or 44934.1, if the employee does not
15 demand a hearing by filing a written request for hearing with the
16 governing board, he or she may be dismissed or suspended without
17 pay for a specific period of time at the expiration of the 30-day
18 period.

19 SEC. 8. Section 44939 of the Education Code is amended to
20 read:

21 44939. (a) This section shall apply only to dismissal or
22 suspension proceedings initiated pursuant to Section 44934.

23 (b) Upon the filing of written charges, duly signed and verified
24 by the person filing them with the governing board of a school
25 district, or upon a written statement of charges formulated by the
26 governing board of a school district, charging a permanent
27 employee of the school district with immoral conduct, conviction
28 of a felony or of any crime involving moral turpitude, with
29 incompetency due to mental disability, with willful refusal to
30 perform regular assignments without reasonable cause, as
31 prescribed by reasonable rules and regulations of the employing
32 school district, or with violation of Section 51530, the governing
33 board of the school district may, if it deems that action necessary,
34 immediately suspend the employee from his or her duties and give
35 notice to him or her of his or her suspension, and that 30 days after
36 service of the notice of dismissal, he or she will be dismissed,
37 unless he or she demands a hearing.

38 (c) (1) An employee who has been placed on suspension
39 pursuant to this section may serve and file with the Office of
40 Administrative Hearings a motion for immediate reversal of

1 suspension. Review of a motion filed pursuant to this section shall
2 be limited to a determination as to whether the facts as alleged in
3 the statement of charges, if true, are sufficient to constitute a basis
4 for immediate suspension under this section. The motion shall
5 include a memorandum of points and authorities setting forth law
6 and argument supporting the employee's contention that the
7 statement of charges does not set forth a sufficient basis for
8 immediate suspension.

9 (2) The motion shall be served upon the governing board of the
10 school district and filed with the Office of Administrative Hearings
11 within 30 days after service upon the employee of the initial
12 pleading in the matter. The governing board of the school district
13 shall have the right to serve and file a written response to the
14 motion before or at the time of hearing.

15 (3) The hearing on the motion for immediate reversal of
16 suspension shall be held no later than 30 days after the motion is
17 filed with the Office of Administrative Hearings.

18 (4) The administrative law judge shall, no later than 15 days
19 after the hearing, issue an order denying or granting the motion.
20 The order shall be in writing, and a copy of the order shall be
21 served by the Office of Administrative Hearings upon the parties.
22 The grant or denial of the motion shall be without prejudice to
23 consideration by the Commission on Professional Competence
24 based upon the full evidentiary record before it, of the validity of
25 the grounds for dismissal. The ruling shall not be considered by
26 the commission in determining the validity of the grounds for
27 dismissal, and shall not have any bearing on the commission's
28 determination regarding the grounds for dismissal.

29 (5) An order granting a motion for immediate reversal of
30 suspension shall become effective within five days of service of
31 the order. The school district shall make the employee whole for
32 any lost wages, benefits, and compensation within 14 days after
33 service of an order granting the motion.

34 (6) A motion made pursuant to this section shall be the exclusive
35 means of obtaining interlocutory review of suspension pending
36 dismissal. The grant or denial of the motion shall not be subject
37 to interlocutory judicial review.

38 (d) A motion for immediate reversal of suspension pursuant to
39 this section shall have no bearing on the authority of a governing
40 board of a school district to determine the physical placement and

1 assignment of an employee who is suspended or placed on
2 administrative leave during the review of the motion or while
3 dismissal charges are pending.

4 SEC. 9. Section 44939.1 is added to the Education Code, to
5 read:

6 44939.1. (a) This section shall apply only to dismissal or
7 suspension proceedings initiated pursuant to Section 44934.1.

8 (b) Upon the filing of written charges, duly signed and verified
9 by the person filing them with the governing board of a school
10 district, or upon a written statement of charges formulated by the
11 governing board of a school district, charging a permanent
12 employee of the school district with egregious misconduct, as
13 defined in paragraph (1) of subdivision (a) of Section 44932, the
14 governing board of the school district may, if it deems such action
15 necessary, immediately suspend the employee from his or her
16 duties and give notice to him or her of his or her suspension, and
17 that 30 days after service of the notice of dismissal, he or she will
18 be dismissed, unless he or she demands a hearing.

19 SEC. 10. Section 44939.5 is added to the Education Code, to
20 read:

21 44939.5. (a) School districts, county offices of education, and
22 charter schools are prohibited from entering into an agreement that
23 would prevent a mandatory report of egregious misconduct, as
24 defined in paragraph (1) of subdivision (a) of Section 44932, to
25 the Commission on Teacher Credentialing or any other state or
26 federal agency.

27 (b) School districts, county offices of education, and charter
28 schools are prohibited from entering into an agreement that would
29 authorize expunging from a school employee's personnel file
30 credible complaints of, substantiated investigations into, or
31 discipline for, egregious misconduct. This prohibition does not
32 preclude any agreement to remove documents containing
33 allegations that have been the subject of a hearing before an
34 arbitrator, school board, personnel commission, Commission on
35 Professional Competence, or administrative law judge, in which
36 the employee prevailed, the allegations were determined to be
37 false, not credible, or unsubstantiated, or a determination was made
38 that the discipline was not warranted.

39 (c) A school district, county office of education, or charter
40 school that has made a report of an employee's egregious

1 misconduct to the Commission on Teacher Credentialing shall
2 disclose this fact to a school district, county office of education,
3 or charter school considering an application for employment from
4 the employee, upon inquiry.

5 (d) Any school employee who alleges that another school
6 employee has engaged in egregious misconduct, as defined in
7 paragraph (1) of subdivision (a) of Section 44932, knowing at the
8 time of making the allegation that the allegation was false, shall
9 be subject to certificate revocation, if applicable.

10 SEC. 11. Section 44940 of the Education Code is amended to
11 read:

12 44940. (a) For purposes of this section, “charged with a
13 mandatory leave of absence offense” is defined to mean charged
14 by complaint, information, or indictment filed in a court of
15 competent jurisdiction with the commission of any sex offense as
16 defined in Section 44010, with a violation or attempted violation
17 of Section 187 of the Penal Code, or with the commission of any
18 offense involving aiding or abetting the unlawful sale, use, or
19 exchange to minors of controlled substances listed in Schedule I,
20 II, or III, as contained in Sections 11054, 11055, and 11056 of the
21 Health and Safety Code.

22 (b) For purposes of this section, “charged with an optional leave
23 of absence offense” is defined to mean a charge by complaint,
24 information, or indictment filed in a court of competent jurisdiction
25 with the commission of any controlled substance offense as defined
26 in Section 44011 or 87011, Sections 11357 to 11361, inclusive,
27 or Section 11363, 11364, or 11370.1 of the Health and Safety
28 Code, insofar as these sections relate to any controlled substances
29 except marijuana, mescaline, peyote, or tetrahydrocannabinols.

30 (c) For purposes of this section and Section 44940.5, the term
31 “school district” includes county offices of education.

32 (d) (1) If a certificated employee of a school district is charged
33 with a mandatory leave of absence offense, as defined in
34 subdivision (a), upon being informed that a charge has been filed,
35 the governing board of the school district shall immediately place
36 the employee on compulsory leave of absence. The duration of
37 the leave of absence shall be until a time not more than 10 days
38 after the date of entry of the judgment in the proceedings. No later
39 than 10 days after receipt of the complaint, information, or

1 indictment described by subdivision (a), the school district shall
2 forward a copy to the Commission on Teacher Credentialing.

3 (2) Upon receiving a copy of a complaint, information, or
4 indictment described in subdivision (a) and forwarded by a school
5 district, the Commission on Teacher Credentialing shall
6 automatically suspend the employee's teaching or service
7 credential. The duration of the suspension shall be until a time not
8 more than 10 days after the date of entry of the judgment in the
9 proceedings.

10 (e) (1) If a certificated employee of a school district is charged
11 with an optional leave of absence offense as defined in subdivision
12 (b), the governing board of the school district may immediately
13 place the employee upon compulsory leave in accordance with the
14 procedure in this section and Section 44940.5. If any certificated
15 employee is charged with an offense deemed to fall into both the
16 mandatory and the optional leave of absence categories, as defined
17 in subdivisions (a) and (b), that offense shall be treated as a
18 mandatory leave of absence offense for purposes of this section.
19 No later than 10 days after receipt of the complaint, information,
20 or indictment described by subdivision (a), the school district shall
21 forward a copy to the Commission on Teacher Credentialing.

22 (2) Upon receiving a copy of a complaint, information, or
23 indictment described in subdivision (a) and forwarded by a school
24 district, the Commission on Teacher Credentialing shall
25 automatically suspend the employee's teaching or service
26 credential. The duration of the suspension shall be until a time not
27 more than 10 days after the date of entry of the judgment in the
28 proceedings.

29 SEC. 12. Section 44941 of the Education Code is amended to
30 read:

31 44941. (a) The notice of suspension and intention to dismiss
32 shall be in writing and served pursuant to Section 44936. A copy
33 of the charges filed, containing the information required by Section
34 11503 of the Government Code, together with a copy of the
35 provisions of this article, shall be attached to the notice. If the
36 employee does not demand a hearing within the 30-day period, he
37 or she may be dismissed upon the expiration of 30 days after
38 service of the notice.

39 (b) An employee who demands a hearing shall file a single
40 document containing his or her request for a hearing pursuant to

1 this section and a notice of defense pursuant to Sections 11505
2 and 11506 of the Government Code.

3 SEC. 13. Section 44941.1 is added to the Education Code, to
4 read:

5 44941.1. Notwithstanding Section 44941, the notice of
6 suspension and intention to dismiss that is based exclusively on
7 charges of egregious misconduct as described in paragraph (1) of
8 subdivision (a) of Section 44932, shall be in writing and served
9 pursuant to Section 44936. A copy of the charges filed, containing
10 the information required by Section 11503 of the Government
11 Code, together with a copy of the provisions of this article, shall
12 be attached to the notice. If the employee does not demand a
13 hearing within the 30-day period, he or she may be dismissed upon
14 the expiration of 30 days after service of the notice.

15 SEC. 14. Section 44943 of the Education Code is amended to
16 read:

17 44943. When any employee who has been served with notice
18 pursuant to Section 44934 or 44934.1 of the governing board's
19 intention to dismiss or suspend him or her demands a hearing, the
20 governing board shall have the option either (a) to rescind its
21 action, or (b) schedule a hearing on the matter.

22 SEC. 15. Section 44944 of the Education Code is amended to
23 read:

24 44944. (a) This section shall apply only to dismissal or
25 suspension proceedings initiated pursuant to Section 44934.

26 (b) (1) (A) In a dismissal or suspension proceeding initiated
27 pursuant to Section 44934, if a hearing is requested by the
28 employee, the hearing shall be commenced within six months from
29 the date of the employee's demand for a hearing. A continuance
30 shall not extend the date for the commencement of the hearing
31 more than six months from the date of the employee's request for
32 a hearing, except for extraordinary circumstances, as determined
33 by the administrative law judge. If extraordinary circumstances
34 are found that extend the date for the commencement of the
35 hearing, the deadline for concluding the hearing and closing the
36 record pursuant to this subdivision shall be extended for a period
37 of time equal to the continuance. The hearing date shall be
38 established after consultation with the employee and the governing
39 board of the school district, or their representatives, except that if
40 the parties are not able to reach an agreement on a date, the Office

1 of Administrative Hearings shall unilaterally set a date in
2 compliance with this section. The hearing shall be completed by
3 a closing of the record within seven months of the date of the
4 employee's demand for a hearing. A continuance shall not extend
5 the date for the close of the record more than seven months from
6 the date of the employee's request for a hearing, except for good
7 cause, as determined by the administrative law judge.

8 (B) Where substantial progress has been made in completing
9 the previously scheduled days of the hearing within the
10 seven-month period but the hearing cannot be completed, for good
11 cause shown, within the seven-month period, the period for
12 completing the hearing may be extended by the presiding
13 administrative law judge. If the administrative law judge grants a
14 continuance under this subparagraph, he or she shall establish a
15 reasonable timetable for the completion of the hearing and the
16 closing of the record. The hearing shall be initiated and conducted,
17 and a decision made, in accordance with Chapter 5 (commencing
18 with Section 11500) of Part 1 of Division 3 of Title 2 of the
19 Government Code, and the Commission on Professional
20 Competence shall have all of the power granted to an agency
21 pursuant to that chapter, except as described in this article.

22 (2) (A) A witness shall not be permitted to testify at the hearing
23 except upon oath or affirmation. No testimony shall be given or
24 evidence introduced relating to matters that occurred more than
25 four years before the date of the filing of the notice, except
26 allegations of an act described in Section 44010 of this code or
27 Sections 11165.2 to 11165.6, inclusive, of the Penal Code.

28 (B) Evidence of records regularly kept by the governing board
29 of the school district concerning the employee may be introduced,
30 but no decision relating to the dismissal or suspension of an
31 employee shall be made based on charges or evidence of any nature
32 relating to matters occurring more than four years before the filing
33 of the notice, except allegations of an act described in Section
34 44010 of this code or Sections 11165.2 to 11165.6, inclusive, of
35 the Penal Code.

36 (c) (1) The hearing provided for in this section shall be
37 conducted by a Commission on Professional Competence, unless
38 the parties submit a statement in writing to the Office of
39 Administrative Hearings, indicating that both parties waive the
40 right to convene a Commission on Professional Competence and

1 stipulate to having the hearing conducted by a single administrative
2 law judge. If the parties elect to waive a hearing before the
3 Commission on Professional Competence, the hearing shall be
4 initiated and conducted, and a decision made, in accordance with
5 Chapter 5 (commencing with Section 11500) of Part 1 of Division
6 3 of Title 2 of the Government Code, and the administrative law
7 judge conducting the hearing shall have all the powers granted to
8 a Commission on Professional Competence pursuant to that
9 chapter, except as described in this article.

10 (2) If the parties elect not to waive a hearing before a
11 Commission on Professional Competence, one member of the
12 commission shall be selected by the employee, one member shall
13 be selected by the governing board of the school district, and one
14 member shall be an administrative law judge of the Office of
15 Administrative Hearings who shall be chairperson and a voting
16 member of the commission and shall be responsible for assuring
17 that the legal rights of the parties are protected at the hearing.

18 (3) The governing board of the school district and the employee
19 shall select Commission on Professional Competence members
20 no later than 45 days before the date set for hearing, and shall serve
21 notice of their selection upon all other parties and upon the Office
22 of Administrative Hearings. Failure to meet this deadline shall
23 constitute a waiver of the right to selection, and the county board
24 of education or its specific designee shall immediately make the
25 selection. If the county board of education is also the governing
26 board of the school district or has by statute been granted the
27 powers of a governing board, the selection shall be made by the
28 Superintendent, who shall be reimbursed by the school district for
29 all costs incident to the selection.

30 (4) Any party who believes that a selected Commission on
31 Professional Competence member is not qualified may file an
32 objection, including a statement describing the basis for the
33 objection, with the Office of Administrative Hearings and serve
34 the objection and statement upon all other parties within 10 days
35 of the date that the notice of selection is filed. Within seven days
36 after the filing of any objection, the administrative law judge
37 assigned to the matter shall rule on the objection or convene a
38 teleconference with the parties for argument.

39 (5) (A) The member selected by the governing board of the
40 school district and the member selected by the employee shall not

1 be related to the employee and shall not be employees of the school
2 district initiating the dismissal or suspension. Each member shall
3 hold a currently valid credential and have at least three years'
4 experience within the past 10 years in the discipline of the
5 employee.

6 (B) For purposes of this paragraph, the following terms have
7 the following meanings:

8 (i) For an employee subject to dismissal whose most recent
9 teaching assignment is in kindergarten or any of the grades 1 to 6,
10 inclusive, "discipline" means a teaching assignment in kindergarten
11 or any of the grades 1 to 6, inclusive.

12 (ii) For an employee subject to dismissal whose most recent
13 assignment requires an education specialist credential or a services
14 credential, "discipline" means an assignment that requires an
15 education specialist credential or a services credential, respectively.

16 (iii) For an employee subject to dismissal whose most recent
17 teaching assignment is in any of the grades 7 to 12, inclusive,
18 "discipline" means a teaching assignment in any of grades 7 to 12,
19 inclusive, in the same area of study, as that term is used in Section
20 51220, as the most recent teaching assignment of the employee
21 subject to dismissal.

22 (d) (1) The decision of the Commission on Professional
23 Competence shall be made by a majority vote, and the commission
24 shall prepare a written decision containing findings of fact,
25 determinations of issues, and a disposition that shall be, solely,
26 one of the following:

27 (A) That the employee should be dismissed.

28 (B) That the employee should be suspended for a specific period
29 of time without pay.

30 (C) That the employee should not be dismissed or suspended.

31 (2) The decision of the Commission on Professional Competence
32 that the employee should not be dismissed or suspended shall not
33 be based on nonsubstantive procedural errors committed by the
34 school district or governing board of the school district unless the
35 errors are prejudicial errors.

36 (3) The Commission on Professional Competence shall not have
37 the power to dispose of the charge of dismissal by imposing
38 probation or other alternative sanctions. The imposition of
39 suspension pursuant to subparagraph (B) of paragraph (1) shall be

1 available only in a suspension proceeding authorized pursuant to
2 subdivision (b) of Section 44932 or Section 44933.

3 (4) The decision of the Commission on Professional Competence
4 shall be deemed to be the final decision of the governing board of
5 the school district.

6 (5) The governing board of the school district may adopt from
7 time to time rules and procedures not inconsistent with this section
8 as may be necessary to effectuate this section.

9 (6) The governing board of the school district and the employee
10 shall have the right to be represented by counsel.

11 (e) (1) If the member selected by the governing board of the
12 school district or the member selected by the employee is employed
13 by any school district in this state, the member shall, during any
14 service on a Commission on Professional Competence, continue
15 to receive salary, fringe benefits, accumulated sick leave, and other
16 leaves and benefits from the school district in which the member
17 is employed, but shall receive no additional compensation or
18 honorariums for service on the commission.

19 (2) If the member selected is a retired employee, the member
20 shall receive pay at the daily substitute teacher rate in the school
21 district that is a party to the hearing. Service on a Commission on
22 Professional Competence shall not be credited toward retirement
23 benefits.

24 (3) If service on a Commission on Professional Competence
25 occurs during summer recess or vacation periods, the member shall
26 receive compensation proportionate to that received during the
27 current or immediately preceding contract period from the
28 member's employing school district, whichever amount is greater.

29 (f) (1) If the Commission on Professional Competence
30 determines that the employee should be dismissed or suspended,
31 the governing board of the school district and the state shall share
32 equally the expenses of the hearing, including the cost of the
33 administrative law judge. The state shall pay any costs incurred
34 under paragraphs (2) and (3) of subdivision (e), the reasonable
35 expenses, as determined by the administrative law judge, of the
36 member selected by the governing board of the school district and
37 the member selected by the employee, including, but not limited
38 to, payments or obligations incurred for travel, meals, and lodging,
39 and the cost of the substitute or substitutes, if any, for the member
40 selected by the governing board of the school district and the

1 member selected by the employee. The Controller shall pay all
2 claims submitted pursuant to this paragraph from the General Fund,
3 and may prescribe reasonable rules, regulations, and forms for the
4 submission of the claims. The employee and the governing board
5 of the school district shall pay their own attorney's fees.

6 (2) If the Commission on Professional Competence determines
7 that the employee should not be dismissed or suspended, the
8 governing board of the school district shall pay the expenses of
9 the hearing, including the cost of the administrative law judge, any
10 costs incurred under paragraphs (2) and (3) of subdivision (e), the
11 reasonable expenses, as determined by the administrative law
12 judge, of the member selected by the governing board of the school
13 district and the member selected by the employee, including, but
14 not limited to, payments or obligations incurred for travel, meals,
15 and lodging, the cost of the substitute or substitutes, if any, for the
16 member selected by the governing board of the school district and
17 the member selected by the employee, and reasonable attorney's
18 fees incurred by the employee.

19 (3) As used in this section, "reasonable expenses" shall not be
20 deemed "compensation" within the meaning of subdivision (e).

21 (4) If either the governing board of the school district or the
22 employee petitions a court of competent jurisdiction for review of
23 the decision of the Commission on Professional Competence the
24 payment of expenses to members of the commission required by
25 this subdivision shall not be stayed.

26 (5) If the decision of the Commission on Professional
27 Competence is reversed or vacated by a court of competent
28 jurisdiction, either the state, having paid the commission members'
29 expenses, shall be entitled to reimbursement from the governing
30 board of the school district for those expenses, or the governing
31 board of the school district, having paid the expenses, shall be
32 entitled to reimbursement from the state. If either the governing
33 board of the school district or the employee petitions a court of
34 competent jurisdiction for review of the decision to overturn the
35 administrative law judge's decision, the payment of the expenses
36 of the hearing, including the cost of the administrative law judge
37 required by this paragraph, shall be stayed until no further appeal
38 is sought, or all appeals are exhausted.

39 (g) The hearing provided for in this section shall be conducted
40 in a place selected by agreement among the members of the

1 Commission on Professional Competence. In the absence of
2 agreement, the place shall be selected by the administrative law
3 judge.

4 SEC. 16. Section 44944.05 is added to the Education Code, to
5 read:

6 44944.05. (a) In a dismissal or suspension proceeding initiated
7 pursuant to Section 44934, in lieu of written discovery required
8 pursuant to Section 11507.6 of the Government Code, the parties
9 shall make disclosures as described in this section. This section
10 shall not apply to dismissal or suspension proceedings initiated
11 pursuant to Section 44934.1.

12 (b) (1) An initial disclosure shall comply with the following
13 requirements:

14 (A) A party shall, without awaiting a discovery request, provide
15 to the other parties both of the following:

16 (i) The name and, if known, the address and telephone number
17 of each individual likely to have discoverable information, along
18 with the subjects of information relating to the allegations made
19 in the charges and the parties' claims and defenses, unless the use
20 would be solely for impeachment purposes.

21 (ii) A copy of all documents, electronically stored information,
22 and tangible items that the disclosing party has in its possession,
23 custody, or control relating to the allegations made in the charges
24 and the parties' claims or defenses, unless the use would be solely
25 for impeachment.

26 (B) The school district and the employee shall make their initial
27 disclosures within 45 days of the date of the employee's demand
28 for a hearing.

29 (C) A party shall make its initial disclosures based on the
30 information then reasonably available to it. A party is not excused
31 from making its disclosures because it has not fully investigated
32 the case or because it challenges the sufficiency of another party's
33 disclosures. A party's failure to make initial disclosures within the
34 deadlines set forth in this section shall preclude the party from
35 introducing witnesses or evidence not disclosed at the hearing,
36 unless the party shows good cause for its failure to timely disclose.

37 (D) A party has an obligation to promptly supplement its initial
38 disclosures as new information or evidence becomes known or
39 available. Supplemental disclosures shall be made as soon as
40 possible, and no later than 60 days before the date of

1 commencement of the hearing. A party's failure to make
2 supplemental disclosures promptly upon discovery or availability
3 of new information or evidence shall preclude the party from
4 introducing witnesses or evidence not disclosed at the hearing,
5 unless the party shows good cause for its failure to timely disclose.

6 (2) The disclosure of expert testimony shall comply with the
7 following requirements:

8 (A) A party shall also disclose to the other parties the identities
9 of any expert witnesses whose testimony it may use at the hearing.

10 (B) The disclosure specified in subparagraph (A) shall be
11 accompanied by a summary of the witness' expected testimony,
12 including a description of the facts and data considered by the
13 witness; a description of the witness' qualifications, including a
14 list of all publications authored in the previous 10 years; a list of
15 all other cases in which, during the previous four years, the witness
16 testified as an expert at a hearing or by deposition; and a statement
17 of the compensation to be paid to the expert witness.

18 (C) Expert witness disclosures shall be made no later than 60
19 days before the date of commencement of the hearing. A party's
20 failure to make full and timely expert witness disclosures shall
21 preclude the party's use of the expert witness' testimony or
22 evidence at the hearing.

23 (3) Prehearing disclosures shall comply with the following
24 requirements:

25 (A) In addition to the disclosures required in paragraphs (1) and
26 (2), a party shall provide to the other parties the following
27 information about the evidence that it may present at the hearing:

28 (i) The name, and, if not previously provided, the address and
29 telephone number of each witness, separately identifying those
30 the party expects to present and those it may call if the need arises.

31 (ii) An identification of each exhibit, separately identifying
32 those items the party expects to offer and those it may offer if the
33 need arises.

34 (B) Prehearing disclosures shall be made at least 30 days before
35 the hearing.

36 (i) Within 14 days after prehearing disclosures are made, a party
37 shall file and serve any objections, along with the grounds for each
38 objection, to the admissibility of evidence.

39 (ii) These objections shall be decided on the first day of hearing,
40 or at a prehearing conference conducted pursuant to Section

1 11511.5 of the Government Code. Documents and individuals not
2 timely disclosed without good cause shall be precluded from
3 admission at the hearing.

4 (c) In addition to the disclosures required by subdivision (a),
5 the parties may obtain discovery by oral deposition in California,
6 in accordance with Sections 2025.010 to 2025.620, inclusive, of
7 the Code of Civil Procedure, except as described in this article.
8 The school district may take the depositions of the employee and
9 no more than four other witnesses, and the employee may take
10 depositions of no more than five witnesses. Each witness deposition
11 is limited to seven hours. An administrative law judge may allow
12 the parties to conduct additional depositions only upon a showing
13 of good cause. If a motion to conduct additional depositions is
14 granted by the administrative law judge, the employee shall be
15 given a meaningful opportunity to respond to new evidence
16 introduced as a result of the additional depositions. An order
17 granting a motion for additional depositions shall not constitute
18 an extraordinary circumstance or good cause for purposes of
19 extending the deadlines set forth in paragraph (1) of subdivision
20 (b) of Section 44944.

21 (d) If the right to disclosures or oral depositions is denied by
22 either the employee or the governing board, the exclusive right of
23 a party seeking an order compelling production of discovery shall
24 be pursuant to Section 11507.7 of the Government Code. If a party
25 seeks protection from unreasonable or oppressive discovery
26 demands, the exclusive right of a party seeking an order for
27 protection shall be pursuant to Section 11450.30 of the Government
28 Code.

29 SEC. 17. Section 44944.1 of the Education Code is repealed.

30 SEC. 18. Section 44944.1 is added to the Education Code, to
31 read:

32 44944.1. (a) This section shall apply only to dismissal or
33 suspension proceedings initiated pursuant to Section 44934.1.

34 (b) Once the governing board of the school district has initiated
35 dismissal or suspension proceedings pursuant to Section 44934.1,
36 the process described in this section shall be the exclusive means
37 of pursuing a dismissal or suspension for the acts or events
38 constituting the charge of egregious misconduct, and these specific
39 acts or events shall not be used to support any additional or
40 subsequent notice of suspension or dismissal pursuant to Section

1 44934. Once the governing board of the school district has initiated
2 dismissal or suspension proceedings pursuant to Section 44934.1,
3 the process described in this section shall be the exclusive means
4 of pursuing a dismissal or suspension against the certificated
5 employee until a written decision has been reached by the
6 administrative law judge pursuant to paragraph (1) of subdivision
7 (e), the charges have been dismissed, or the dismissal or suspension
8 proceeding has been settled or otherwise resolved. If a suspension
9 initiated against an employee pursuant to Section 44934.1 is
10 upheld, and a dismissal was not pursued on the same charges, the
11 entry of judgment of the suspension under Section 44934.1 may
12 be considered as evidence to support a subsequent notice of
13 dismissal based on other charges. If a suspension initiated against
14 an employee pursuant to Section 44934.1 is upheld, but the
15 employee prevailed on the dismissal proceeding based on the same
16 charges, the entry of judgment of the suspension under Section
17 44934.1 shall not be considered as evidence to support a subsequent
18 notice of dismissal based on other charges.

19 (c) The hearing provided for in this section shall be initiated
20 and conducted, and a decision made, in accordance with Chapter
21 5 (commencing with Section 11500) of Part 1 of Division 3 of
22 Title 2 of the Government Code, by an administrative law judge.
23 The administrative law judge conducting the hearing shall have
24 all the powers granted to an agency pursuant to that chapter.

25 (d) (1) (A) In a dismissal or suspension proceeding initiated
26 pursuant to Section 44934.1, if a hearing is requested by the
27 employee, the hearing shall be commenced within 60 days from
28 the date of the employee's demand for a hearing. The hearing date
29 shall be established after consultation with the employee and the
30 governing board, or their representatives, except that, if the parties
31 are not able to reach agreement on a date, the Office of
32 Administrative Hearings shall unilaterally set a date in compliance
33 with this section. The Office of Administrative Hearings shall
34 prioritize the scheduling of dismissal or suspension proceedings
35 initiated pursuant to Section 44934.1 over other proceedings related
36 to certificated school employees.

37 (B) The right of discovery of the parties shall not be limited to
38 those matters set forth in Section 11507.6 of the Government Code
39 but shall include the rights and duties of any party in a civil action
40 brought in a superior court under Title 4 (commencing with Section

1 2016.010) of Part 4 of the Code of Civil Procedure.
2 Notwithstanding any provision to the contrary, and except for the
3 taking of oral depositions, no discovery shall occur later than 30
4 calendar days after the employee is served with a copy of the
5 accusation pursuant to Section 11505 of the Government Code.
6 In all cases, discovery shall be completed prior to seven calendar
7 days before the date upon which the hearing commences. If any
8 continuance is granted pursuant to Section 11524 of the
9 Government Code, the time limitation for commencement of the
10 hearing as provided in this subdivision shall be extended for a
11 period of time equal to the continuance. The continuance or
12 continuances granted pursuant to Section 11524 of the Government
13 Code, if any, shall not extend by more than a total of 30 days the
14 deadline set forth in paragraph (1) of subdivision (d). The extension
15 shall not include that period of time attributable to an unlawful
16 refusal by either party to allow the discovery provided for in this
17 section.

18 (2) If the right of discovery granted under paragraph (1) is
19 denied by either the employee or the governing board, the exclusive
20 right of a party seeking an order compelling production of
21 discovery shall be pursuant to Section 11507.7 of the Government
22 Code. If a party seeks protection from unreasonable or oppressive
23 discovery demands, the exclusive right of a party seeking an order
24 for protection shall be pursuant to Section 11450.30 of the
25 Government Code.

26 (3) A witness shall not be permitted to testify at the hearing
27 except upon oath or affirmation. No testimony shall be given or
28 evidence introduced relating to matters that occurred more than
29 four years before the date of the filing of the notice, except
30 evidence of egregious misconduct, as described in paragraph (1)
31 of subdivision (a) of Section 44932, which shall not be excluded
32 based on the passage of time.

33 (4) Evidence of records regularly kept by the governing board
34 of the school district concerning the employee may be introduced,
35 but no decision relating to the dismissal or suspension of an
36 employee shall be made based on charges or evidence of any nature
37 relating to matters occurring more than four years before the filing
38 of the notice, except evidence of egregious misconduct, as
39 described in paragraph (1) of subdivision (a) of Section 44932,
40 which shall not be excluded based on the passage of time.

1 (e) (1) The administrative law judge shall prepare a written
2 decision containing findings of fact, determinations of issues, and
3 a disposition that shall be, solely, one of the following:

4 (A) That the employee should be dismissed.

5 (B) That the employee should be suspended for a specific period
6 of time without pay.

7 (C) That the employee should not be dismissed or suspended.

8 (2) The decision of the administrative law judge that the
9 employee should not be dismissed or suspended shall not be based
10 on nonsubstantive procedural errors committed by the school
11 district or the governing board of the school district unless the
12 errors are prejudicial errors.

13 (3) The administrative law judge shall not have the power to
14 dispose of the charge of dismissal by imposing probation or other
15 alternative sanctions. The imposition of suspension pursuant to
16 subparagraph (B) of paragraph (1) shall be available only in a
17 suspension proceeding authorized pursuant to subdivision (b) of
18 Section 44932 or Section 44933.

19 (4) The decision of the administrative law judge shall be deemed
20 to be the final decision of the governing board of the school district.

21 (5) The state board may adopt from time to time rules and
22 procedures not inconsistent with this section as may be necessary
23 to effectuate this section.

24 (6) The governing board of the school district and the employee
25 shall have the right to be represented by counsel.

26 (f) (1) If the administrative law judge determines that the
27 employee should be dismissed or suspended, the governing board
28 of the school district and the state shall share equally the expenses
29 of the hearing, including the cost of the administrative law judge.
30 The Controller shall pay all claims submitted pursuant to this
31 paragraph from the General Fund, and may prescribe reasonable
32 rules, regulations, and forms for the submission of the claims. The
33 employee and the governing board of the school district shall pay
34 their own attorney's fees.

35 (2) If the administrative law judge determines that the employee
36 should not be dismissed or suspended, the governing board of the
37 school district shall pay the expenses of the hearing, including the
38 cost of the administrative law judge, and reasonable attorney's
39 fees incurred by the employee.

1 (3) If either the governing board of the school district or the
2 employee petitions a court of competent jurisdiction for review of
3 the decision of the administrative law judge, the payment of the
4 expenses of the hearing, including the cost of the administrative
5 law judge required by this subdivision, shall not be stayed.

6 (4) If either the governing board of the school district or the
7 employee petitions a court of competent jurisdiction for review of
8 the decision of the administrative law judge and the decision is
9 upheld, the appellee shall be entitled to an award of reasonable
10 attorney's fees and costs expended on the appeal.

11 (5) If the decision of the administrative law judge is reversed
12 or vacated by a court of competent jurisdiction, either the state,
13 having paid one-half of the expenses of the hearing, including the
14 cost of the administrative law judge, shall be entitled to
15 reimbursement from the governing board of the school district for
16 those expenses, or the governing board of the school district, having
17 paid one-half of the expenses, shall be entitled to reimbursement
18 from the state. If either the governing board of the school district
19 or the employee petitions a court of competent jurisdiction for
20 review of the decision to overturn the administrative law judge's
21 decision, the payment of the expenses of the hearing, including
22 the cost of the administrative law judge required by this paragraph,
23 shall be stayed until no further appeal is sought, or all appeals are
24 exhausted.

25 (g) The hearing provided for in this section shall be conducted
26 in a place selected in accordance with Section 11508 of the
27 Government Code.

28 SEC. 19. Section 44944.3 is added to the Education Code, to
29 read:

30 44944.3. At a hearing conducted pursuant to Section 44944 or
31 44944.1, the administrative law judge, before admitting any
32 testimony or evidence concerning an individual pupil, shall
33 determine whether the introduction of the testimony or evidence
34 at an open hearing would violate any provision of Article 5
35 (commencing with Section 49073) of Chapter 6.5 of Part 27 of
36 Division 4, relating to privacy of pupil records. If the administrative
37 law judge, in his or her discretion, determines that any of those
38 provisions would be violated, he or she shall order that the hearing,
39 or any portion thereof at which the testimony or evidence would
40 be produced, be conducted in executive session.

1 SEC. 20. Section 44945 of the Education Code is amended to
2 read:

3 44945. The decision reached in a dismissal or suspension
4 proceeding initiated pursuant to Section 44934 or 44934.1 may,
5 on petition of either the governing board or the employee, be
6 reviewed by a court of competent jurisdiction in the same manner
7 as a decision made by a hearing officer under Chapter 5
8 (commencing with Section 11500) of Part 1 of Division 3 of Title
9 2 of the Government Code. The court, on review, shall exercise
10 its independent judgment on the evidence. The proceeding shall
11 be set for hearing at the earliest possible date and shall take
12 precedence over all other cases, except older matters of the same
13 character and matters to which special precedence is given by law.

14 SEC. 21. If the Commission on State Mandates determines
15 that this act contains costs mandated by the state, reimbursement
16 to local agencies and school districts for those costs shall be made
17 pursuant to Part 7 (commencing with Section 17500) of Division
18 4 of Title 2 of the Government Code.